



Applicant: ERNEST W. MOODY ET AL.

Serial No.: 10/015,108

Art Unit: 3712

Filed: December 11, 2001

Examiner: Mendiratta, Vishu K.

For: ELECTRONIC MULTI-HAND STUD POKER GAMES

WITH PAYOUT MULTIPLIERS

MAIL STOP APPEAL BRIEF -- PATENTS

Commissioner for Patents

P.O. BOX 1450

ALEXANDRIA, VA 22313-1450

APPEAL BRIEF

|                                                        |    |
|--------------------------------------------------------|----|
| 1. REAL PARTY IN INTEREST .....                        | 1  |
| 2. RELATED APPEALS AND INTERFERENCES .....             | 2  |
| 3. STATUS OF CLAIMS .....                              | 2  |
| 4. STATUS OF AMENDMENTS .....                          | 2  |
| 5. SUMMARY OF THE CLAIMED SUBJECT MATTER .....         | 2  |
| 6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL ..... | 5  |
| 7. ARGUMENTS .....                                     | 5  |
| 8. CONCLUSION .....                                    | 9  |
| CLAIMS APPENDIX .....                                  | 10 |
| EVIDENCE APPENDIX .....                                | 18 |
| RELATED PROCEEDINGS APPENDIX .....                     | 19 |

I hereby certify that this correspondence is being deposited with the United States Postal Service as on this date January 12, 2005 in an envelope as "Express Mail Post Office to Addressee" Mailing Label No. ED002843375US addressed to: MAIL STOP APPEAL BRIEF -- PATENTS, COMMISSIONER FOR PATENTS, PO BOX 1450, ALEXANDRIA, VA 22313-1450.

Ernest W. Moody et al.

Applicant(s)

Signature

January 12, 2005

Date of Signature

#### 1. REAL PARTY IN INTEREST

This application has not yet been assigned, but it is under contract to be assigned to Action Gaming, Inc., a Nevada corporation.

#### 2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

#### 3. STATUS OF CLAIMS

Claims 1-15 are pending in this application. Claims 1-15 stand FINALLY rejected.

#### 4. STATUS OF AMENDMENTS

There are no Amendments after the Final rejection of Claims 1-15.

#### 5. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants' invention relates to methods of playing a stud poker card game.

Claim 1 is the first independent claim. In the method set out

in this Claim 1, the player makes a wager to play at least five stud poker hands. [Specification page 9: lines 6-14] At least five partial hands of four cards each are displayed, each partial hand having the same cards. [9:20-10:5; Figure 1 - 110, 120, 130, 140 and 150]

A fifth card is displayed into each of the partial hands so that each final hand has five cards. [10:15-17; Figure 2 - 110, 120, 130, 140 and 150] The poker hand ranking of each final hand is determined. [13:2-3] A pre-established amount is awarded to the player based on a pay table for each winning final stud poker hand. [13:3-6] Any amount awarded to the player is multiplied based on the number of same poker hand rankings achieved by the player. [13:14-16; Table 2 -- page 14]

Claim 6 is the second independent claim. Claim 6 is similar in scope to Claim 1, but the player plays at least four stud poker hand instead of at least five as recited in Claim 1.

In the method set out in this Claim 6, the player makes a wager to play four stud poker hands. [16:11-13] At least four partial hands of four cards each are displayed, each partial hand

having the same cards. [16:20-17:4]

A fifth card is displayed into each of the partial hands so that each final hand has five cards. [17:5-7] The poker hand ranking of each final hand is determined. [18:13-14] A pre-established amount is awarded to the player based on a pay table for each winning final stud poker hand. [18:14-17] Any amount awarded to the player is multiplied based on the number of same poker hand rankings achieved by the player. [18:17-19; Table 3 -- page 19]

Claim 11 is the third independent claim. Claim 11 is similar in scope to Claim 1, but the player plays at least three stud poker hands instead of at least five as recited in Claim 1.

In the method set out in this Claim 11, the player makes a wager to play three stud poker hands. [21:9-11] At least three partial hands of four cards each are displayed, each partial hand having the same cards. [21:17-22:1]

A fifth card is displayed into each of the partial hands so that each final hand has five cards. [22:2-4] The poker hand ranking of each final hand is determined. [23:4-5] A pre-

established amount is awarded to the player based on a pay table for each winning final stud poker hand. [23:5-8] Any amount awarded to the player is multiplied based on the number of same poker hand rankings achieved by the player. [23:8-10; Table 6 -- page 24]

#### 6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 1-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Williams (6132311) in view of Hachquet (6050568).

#### 7. ARGUMENTS

Williams '311 discloses a draw poker game, not a stud poker game as set out in the claims of the instant application.

In Williams, the player is dealt two cards face up. The player can hold the first two cards, or discard and replace either or both of the first two cards. This is a draw step in the Williams' method of play -- the instant claims do not have a draw step. In the instant claims, the initial partial hand has four cards and the player must play the initial four cards without

discarding and replacing any of the initial four cards.

Williams does disclose a variation of his game in which the player starts with three cards, but any one, two or all three of the initial three cards may be discarded and replaced.

Appellants' invention relates to a stud poker game that has multiple hands. As set forth in the independent claims, the player plays either five, four or three stud poker hands.

Once the player has made his wager, a plurality of initial partial hands are displayed to the player. Each initial partial hand has the same cards with the cards displayed face up to the player. The initial partial hand are randomly dealt from a single deck of playing cards. Each hand is then completed as a stud poker final hand by dealing the additional cards from either the original single deck of cards (less the initially dealt cards) or from a plurality of partial depleted decks of playing cards, each depleted deck of playing cards comprising a full deck less the cards dealt as the initial partial hand.

As set forth in the independent claims, the initial partial hand has four cards with each four card hand having the same cards by suit and rank. A fifth card is dealt to each hand to complete

a five card stud poker hand.

The player wins or loses depending on the poker hand ranking of each final hand. The amount won by the player is based on the poker hand ranking of each final hand and the amount wagered by the player according to a pay table. If the player achieves two or more final hands of the same poker hand ranking, the amount won by the player is increased, preferably as multiples of the original payout amounts.

However in the Williams disclosure, as the Examiner recognizes, there is no disclosure of dealing four initial cards having the same suit and rank. The Examiner simply argues that Williams could be modified to deal four cards face up "for completing the game quickly".

The Examiner fails to give any basis in the prior art for the modification proposed by the Examiner. In fact, there is no basis in the prior art that would teach or suggest such a modification and the Examiner's conclusion seems to be based on hindsight gleaned from the Appellant's disclosure.

Furthermore, if Williams were modified to deal four initial cards, such would in fact make the Williams game go more slowly,

not more quickly as suggested by the Examiner. Because Williams teaches that any of the initially dealt cards can be discarded and replaced, it would take the player longer to decide which of the four cards he wanted to discard and replace and the controls of the gaming machine to actually effect the discard and replacement of the cards so selected by the player.

Hachquet '568 is relied upon for the proposition that it is old to deal each hand from its own deck of cards. However, Hachquet is also a draw poker game and neither teaches nor discloses the method of dealing four card partial hands, each hand having the same suit and rank, for a stud poker game. Therefore, there is nothing in Hachquet upon which the Examiner can rely to overcome the shortcomings of Williams, as discussed above.

Finally, the method set out in the independent claims specifies that the amount won by the player is multiplied by pre-established multipliers based on the number of same poker hand rankings achieved by the player amount the final stud poker hands. The Examiner has simply ignored this step of the method in his rejection of the claims. It is not discussed by the Examiner in the Final Rejection in any manner. Neither Williams nor Hachquet

teach or suggest increasing the amount won by the player if the player achieves two or more final hands of the same poker ranking.

#### 8. CONCLUSION

Appellants submit that Claims 1-15 have been improperly rejected by the Examiner under 35 U.S.C. 103. Appellants respectfully request that the Board of Appeals reverse the Examiner's rejections of Claims 1-15 and remand this application to the Examiner for further action consisting of a Notice of Allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Edward Roethel", written over a horizontal line.

JOHN EDWARD ROETHEL  
Attorney for Appellants  
Registration No. 28,372

2290 S. Jones Blvd., #100  
Las Vegas, NV 89146  
Phone: (702) 364-1190

## CLAIMS APPENDIX

Claim 1. A method of playing a stud poker card game comprising:

- a) the player making a wager to play at least five stud poker hands;
- b) dealing and displaying face up at least five partial hands of four cards each, each partial hand having the same cards;
- c) dealing and displaying face up one additional card to each hand so that each final stud poker hand has five cards;
- d) determining the poker hand ranking of each final stud poker hand;
- e) awarding the player a pre-established amount based on a base pay table for each final stud poker hand that has a winning poker hand ranking; and
- f) multiplying the amount awarded to the player by pre-established multipliers based on the number of same poker hand rankings achieved by the player among the final stud poker hands.

Claim 2. The method of Claim 1 in which the additional cards for each final hand are dealt from a depleted deck which consists of the original deck of cards less the cards dealt as the partial hand.

Claim 3. The method of Claim 1 in which all of the additional cards for each final hand are dealt from the same original deck of cards less the cards dealt as the partial hand.

Claim 4. The method of Claim 1 in which the base pay table comprises:

| POKER HAND COMBINATION                      | PAYOUT ODDS |
|---------------------------------------------|-------------|
| Less than Pair of 7's                       | Losing Hand |
| <u>Pair of 7's thru Aces</u>                | 1 for 1     |
| Two Pair                                    | 3 for 1     |
| Three of a Kind                             | 4 for 1     |
| Straight                                    | 6 for 1     |
| Flush                                       | 9 for 1     |
| Full House                                  | 12 for 1    |
| Four of a Kind -- 5's thru Kings            | 50 for 1    |
| Four of a Kind -- 2's, 3's and 4's          | 80 for 1    |
| Four of a Kind -- Aces                      | 160 for 1   |
| Four 2's, 3's or 4's with an Ace, 2, 3 or 4 | 160 for 1   |
| Four Aces with a 2, 3 or 4                  | 400 for 1   |
| Straight Flush                              | 50 for 1    |
| Royal Flush                                 | 800 for 1   |

Claim 5. The method of Claim 4 in which the pay multipliers comprise:

| <u>POKER HAND RANKING</u>                   | <u>PAY MULTIPLIER</u> |   |   |    |
|---------------------------------------------|-----------------------|---|---|----|
| NUMBER OF SAME HAND ENDINGS                 | 2                     | 3 | 4 | 5  |
| Less than Pair of 7's                       | 0                     | 0 | 0 | 0  |
| Pair of 7's thru Aces                       | 0                     | 2 | 2 | 2  |
| Two Pair                                    | 0                     | 2 | 2 | 2  |
| Three of a Kind                             | 2                     | 2 | 2 | 2  |
| Straight                                    | 2                     | 3 | 4 | 5  |
| Flush                                       | 2                     | 3 | 4 | 5  |
| Full House                                  | 2                     | 3 | 4 | 5  |
| Four of a Kind -- 5's thru Kings            | 2                     | 3 | 4 | 5  |
| Four of a Kind -- 2's, 3's and 4's          | 2                     | 3 | 4 | 5  |
| Four of a Kind -- Aces                      | 2                     | 3 | 4 | 5  |
| Four 2's, 3's or 4's with an Ace, 2, 3 or 4 | 2                     | 3 | 4 | 5  |
| Four Aces with a 2, 3 or 4                  | 2                     | 3 | 4 | 5  |
| Straight Flush                              | 2                     | 3 | 4 | 10 |
| Royal Flush                                 | 2                     | 3 | 4 | 10 |

Claim 6. A method of playing a stud poker card game comprising:

- a) the player making a wager to play at least four stud poker hands;
- b) dealing and displaying face up at least four partial hands of four cards each, each partial hand having the same cards;
- c) dealing and displaying face up one additional card to each hand so that each final stud poker hand has five cards;
- d) determining the poker hand ranking of each final stud

poker hand;

e) awarding the player a pre-established amount based on a base pay table for each final stud poker hand that has a winning poker hand ranking; and

f) multiplying the amount awarded to the player by pre-established multipliers based on the number of same poker hand rankings achieved by the player among the final stud poker hands.

Claim 7. The method of Claim 6 in which the additional cards for each final hand are dealt from a depleted deck which consists of the original deck of cards less the cards dealt as the partial hand.

Claim 8. The method of Claim 6 in which all of the additional cards for each final hand are dealt from the same original deck of cards less the cards dealt as the partial hand.

Claim 9. The method of Claim 6 in which the base pay table comprises:

| <b>POKER HAND COMBINATION</b>               | <b>PAYOUT ODDS</b> |
|---------------------------------------------|--------------------|
| Less than Pair of 6's                       | Losing Hand        |
| <u>Pair of 6's thru Aces</u>                | 1 for 1            |
| Two Pair                                    | 3 for 1            |
| Three of a Kind                             | 4 for 1            |
| Straight                                    | 6 for 1            |
| Flush                                       | 9 for 1            |
| Full House                                  | 12 for 1           |
| Four of a Kind -- 5's thru Kings            | 50 for 1           |
| Four of a Kind -- 2's, 3's and 4's          | 80 for 1           |
| Four of a Kind -- Aces                      | 160 for 1          |
| Four 2's, 3's or 4's with an Ace, 2, 3 or 4 | 160 for 1          |
| Four Aces with a 2, 3 or 4                  | 400 for 1          |
| Straight Flush                              | 200 for 1          |
| Royal Flush                                 | 800 for 1          |

Claim 10. The method of Claim 9 in which the pay multipliers comprise:

| <b><u>POKER HAND RANKING</u></b>            | <b>PAY MULTIPLIER</b> |          |          |
|---------------------------------------------|-----------------------|----------|----------|
| <b>NUMBER OF SAME HAND ENDINGS</b>          | <b>2</b>              | <b>3</b> | <b>4</b> |
| Less than Pair of 6's                       | 0                     | 0        | 0        |
| Pair of 6's thru Aces                       | 0                     | 2        | 2        |
| Two Pair                                    | 0                     | 2        | 2        |
| Three of a Kind                             | 0                     | 2        | 2        |
| Straight                                    | 2                     | 3        | 5        |
| Flush                                       | 2                     | 3        | 5        |
| Full House                                  | 2                     | 3        | 5        |
| Four of a Kind -- 5's thru Kings            | 2                     | 3        | 5        |
| Four of a Kind -- 2's, 3's and 4's          | 2                     | 3        | 5        |
| Four of a Kind - Aces                       | 2                     | 3        | 5        |
| Four 2's, 3's or 4's with an Ace, 2, 3 or 4 | 2                     | 3        | 5        |
| Four Aces with a 2, 3 or 4                  | 2                     | 3        | 5        |
| Straight Flush                              | 3                     | 5        | 10       |
| Royal Flush                                 | 3                     | 5        | 10       |

Claim 11. A method of playing a stud poker card game comprising:

a) the player making a wager to play at least three stud poker hands;

b) dealing and displaying face up at least three partial hands of four cards each, each partial hand having the same cards;

c) dealing and displaying face up one additional card to each hand so that each final stud poker hand has five cards;

d) determining the poker hand ranking of each final stud poker hand;

e) awarding the player a pre-established amount based on a base pay table for each final stud poker hand that has a winning poker hand ranking; and

f) multiplying the amount awarded to the player by pre-established multipliers based on the number of same poker hand rankings achieved by the player among the final stud poker hands.

Claim 12. The method of Claim 11 in which the additional cards for each final hand are dealt from a depleted deck which consists of the original deck of cards less the cards dealt as the partial hand.

Claim 13. The method of Claim 11 in which all of the additional cards for each final hand are dealt from the same original deck of cards less the cards dealt as the partial hand.

Claim 14. The method of Claim 11 in which the base pay table comprises:

| POKER HAND COMBINATION                      | PAYOUT ODDS |
|---------------------------------------------|-------------|
| Less than Pair of 7's                       | Losing Hand |
| <u>Pair of 7's thru Aces</u>                | 1 for 1     |
| Two Pair                                    | 3 for 1     |
| Three of a Kind                             | 4 for 1     |
| Straight                                    | 6 for 1     |
| Flush                                       | 9 for 1     |
| Full House                                  | 12 for 1    |
| Four of a Kind -- 5's thru Kings            | 50 for 1    |
| Four of a Kind -- 2's, 3's and 4's          | 80 for 1    |
| Four of a Kind -- Aces                      | 160 for 1   |
| Four 2's, 3's or 4's with an Ace, 2, 3 or 4 | 160 for 1   |
| Four Aces with a 2, 3 or 4                  | 400 for 1   |
| Straight Flush                              | 50 for 1    |
| Royal Flush                                 | 800 for 1   |

Claim 15. The method of Claim 14 in which the pay multipliers  
comprise:

| <u>POKER HAND RANKING</u>                   | <u>PAY MULTIPLIER</u> |    |
|---------------------------------------------|-----------------------|----|
| NUMBER OF SAME HAND ENDINGS                 | 2                     | 3  |
| Less than Pair of 7's                       | 0                     | 0  |
| Pair of 7's thru Aces                       | 2                     | 2  |
| Two Pair                                    | 2                     | 2  |
| Three of a Kind                             | 2                     | 2  |
| Straight                                    | 3                     | 5  |
| Flush                                       | 3                     | 5  |
| Full House                                  | 3                     | 5  |
| Four of a Kind -- 5's thru Kings            | 3                     | 5  |
| Four of a Kind -- 2's, 3's and 4's          | 3                     | 5  |
| Four of a Kind -- Aces                      | 3                     | 5  |
| Four 2's, 3's or 4's with an Ace, 2, 3 or 4 | 3                     | 5  |
| Four Aces with a 2, 3 or 4                  | 3                     | 5  |
| Straight Flush                              | 3                     | 10 |
| Royal Flush                                 | 3                     | 10 |

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None